

A restriction requirement is proper only if the inventions are independent and distinct. 35 U.S.C. § 121. The Manual of Patent Examining Practice (MPEP) has established a standard for determining if two inventions are patentably distinct. Section 803 of the MPEP states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 806.04 - § 806.04(i)) or distinct (MPEP § 806.05 - § 806.05(i)).

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

MPEP § 803.

In the instant case, the Examiner has not shouldered the burden that is required of him. Here, in the present application, the Examiner has not demonstrated that the two groups of inventions are independent or distinct. The mere assertion that the two groups are patentably distinct does not constitute a shouldering of the Examiner's burden. Accordingly, the Applicant submits that the restriction is improper and should be withdrawn.

Moreover, MPEP § 803 also requires that a serious burden be placed on the Examiner if restriction is not required. Here the Examiner has neither alleged nor demonstrated that such a burden is present. The claims are all directed to an electroporation system. Thus, the Examiner


has not demonstrated that there is a serious burden in examining both sets of claims together.
For this reason alone, the restriction is improper and should be withdrawn.

Because the Examiner has demonstrated neither that the inventions are independent or distinct, nor that there would be a serious burden placed on the Examiner if restriction is not required, the Applicant submits that the election requirement is improper and request that it be withdrawn. Accordingly, the Applicant submits that the present claims are in condition for examination on the merits. Early notification of the results of such examination is earnestly solicited.

Nonetheless, pursuant to 37 C.F.R. § 1.143, the Applicant provisionally elects the species of a source of pulsed electrical energy, with traverse. Should the Examiner determine that any further action is necessary to place this application into better form, the Examiner is encouraged to telephone Applicant's undersigned representative at the number listed below. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account No. 501458.

Respectfully submitted,

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